Office - Supreme Court, U.S.
FILED
JUN 18 1984
ALEXANDER L. STEVAS,
CLERK

Nos. 83-1321, 83-1432, 83-1433, 83-1442, 83-1443, 83-1618

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Petitioners,

v.

TENNECO OIL COMPANY, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

SUPPLEMENTAL MEMORANDUM OF RESPONDENTS TENNECO OIL COMPANY AND CONOCO INC.

Of Counsel:
GLEN E. TAYLOR
JAMES R. SCHMITT
Tenneco Oil Company
P.O. Box 2511
Houston, Texas 77001

THOMAS H. BURTON, JR.
Conoco Inc.
P.O. Box 2197
Houston, Texas 77252

GORDON GOOCH
(Counsel of Record)
CHARLES M. DARLING, IV
BAKER & BOTTS
1701 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Counsel for Respondents Tenneco Oil Company and Conoco Inc.

June 13, 1984

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

CASES: Page

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) 2

Nixon v. Fitzgerald, 457 U.S. 731 (1982) 2

United Gas Improvement Co. v. Continental Oil Co., 381 U.S. 392 (1965) (*"Rayne Field"*) 4

ADMINISTRATIVE AUTHORITY:

El Paso Natural Gas Co., 23 F.E.R.C. (CCH) ¶ 61,365 (1983) 3

STATUTES AND REGULATIONS:

Natural Gas Act, 15 U.S.C. §§ 717-717w (1982) 2

Natural Gas Policy Act, 15 U.S.C. §§ 3301-3432 (1982) 2

Federal Energy Regulatory Commission Rules of Practice and Procedure, 18 C.F.R. § 385.602(c) (1983) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

Nos. 83-1321, 83-1432, 83-1433,
83-1442, 83-1443, 83-1618

THE PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Petitioners,

v.

TENNECO OIL COMPANY, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

SUPPLEMENTAL MEMORANDUM OF RESPONDENTS TENNECO OIL COMPANY AND CONOCO INC.

Respondents Tenneco Oil Company ("Tenneco Oil") and Conoco Inc. ("Conoco") respectfully respond to the Court's direction contained in the letter of the Honorable Alexander L. Stevas of May 31, 1984, calling for comment on settlement agreements "which might have a bearing upon pending petitions for writs of certiorari."

The offer of settlement filed at the Federal Energy Regulatory Commission ("Commission") by Petitioner El Paso Natural Gas Company ("El Paso"), Tenneco Oil

and Conoco would constitute a full and final settlement of all proceedings involving the lease agreements covering nearly seventy percent (70%) of the volumes of gas produced by El Paso that is involved in these petitions, if approved by the Commission and other responsible governmental agencies. *See* "Joint Supplemental Brief of Petitioner El Paso Natural Gas Company and Respondents Tenneco Oil Company and Conoco Inc.," filed May 30, 1984. Because all issues would not be resolved until there is Commission approval, which would also be subject to judicial review, Tenneco Oil and Conoco are of the view that *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), are controlling.

Some elements of the settlement, reviewed below, are not dependent upon prior regulatory approval.

Tenneco Oil and Conoco have an option to accept reconveyance of the leases. If this option is exercised, some issues would be affected. Prospectively from the date of the exercise of the option, Tenneco Oil and Conoco would cease being royalty owners and would become producers of gas subject to the Commission's jurisdiction under the Natural Gas Act, 15 U.S.C. §§ 717-717w (1982), or otherwise subject to the pricing and other provisions of the Natural Gas Policy Act, 15 U.S.C. §§ 3301-3432 (1982). Tenneco Oil and Conoco would then supplant El Paso as owners of the leases and would assume the right to drill new wells. The exercise of this option to accept reconveyance is not contingent upon prior approval by the Commission.

Tenneco Oil and Conoco have agreed to keep the royalty rate at the current level until the Commission has had the opportunity to act on the settlement. That level of royalty has been stipulated by El Paso, Petitioner California Public Utilities Commission, and El Paso's customers, including Petitioners Pacific Gas & Electric Company and Southern California Gas Company, to be just and

reasonable and in the public interest for inclusion in El Paso's rates in the settlement of its latest general rate case. That stipulation of settlement was approved by the Commission as in the public interest and as a reasonable resolution of the issues pending in that case. *El Paso Natural Gas Co.*, 23 F.E.R.C. (CCH) ¶ 61,365 (1983).

Upon approval by the Commission and other responsible governmental agencies, Tenneco Oil and Conoco would be obligated to exercise the option to accept reconveyance of the leases and would be obligated to fulfill any other terms of the settlement agreement, which includes the payment of $50 million in refunds to El Paso's customers. Tenneco Oil and Conoco have identified approximately 1,100 gross well sites that appear to warrant development if the settlement is approved.

The settlement survives denial of the petitions for writs of certiorari. As El Paso states at page 4 of its Supplemental Memorandum, "the settlement arrangements provide a reasonable, prudent, public interest resolution of a broad spectrum of issues that must be resolved irrespective of the Court's decision on the merits of these cases."

The settlement is a compromise. Neither Tenneco Oil and Conoco on the one hand nor El Paso and its customers on the other achieve all objectives that might result from continued litigation. No settlement will appease those who insist on no compromise. It is not difficult to select elements of the compromise that are less desirable to either side than one's expectations, however unrealistic the expectations may be, and to ignore the successes of negotiation. The settlement must be viewed as a whole.

Under the Commission's regulations, a proposed settlement must be accompanied by an "offer of settlement" that explains the basis of the settlement and relates the terms to the public interest. *See* Commission Rules of Practice and Procedure, 18 C.F.R. § 385.602(c) (1983).

El Paso, Tenneco Oil and Conoco filed such an offer of settlement on May 18, 1984. Tenneco Oil and Conoco have included the offer of settlement as an appendix filed herewith under separate cover for the information of the Court. In addition, the entire settlement filed at the Commission on May 18, 1984, including all agreements, representations and warranties, has been lodged with the Clerk.

The settlement filed by Tenneco Oil, Conoco and El Paso has no bearing on whether the lease sales to El Paso in the 1950's are subject to jurisdiction under the *Rayne Field* doctrine. *United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S. 392 (1965). The Court of Appeals has unanimously decided that the lease sales to El Paso do not meet the standards set by this Court in *Rayne Field*. For the reasons set forth in the "Brief in Opposition of Respondents Tenneco Oil Company, *et al.*," the petitions for writs of certiorari should be denied.

Respectfully submitted,

Of Counsel:
GLEN E. TAYLOR
JAMES R. SCHMITT
Tenneco Oil Company
P.O. Box 2511
Houston, Texas 77001
THOMAS H. BURTON, JR.
Conoco Inc.
P.O. Box 2197
Houston, Texas 77252

GORDON GOOCH
(Counsel of Record)
CHARLES M. DARLING, IV
BAKER & BOTTS
1701 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Counsel for Respondents Tenneco Oil Company and Conoco Inc.

June 13, 1984